

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #12	CCRB Case #: 201910248	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/15/2019 10:44 AM	Location of Incident: § 87(2)(b)	Precinct: 50	18 Mo. SOL 5/15/2021	EO SOL 12/30/2021	
Date/Time CV Reported Tue, 11/19/2019 10:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/26/2019 11:39 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Lucia Gaynor	00314	955148	050 PCT
2. POF Rosa Almonte	02432	947191	050 PCT
3. SGT Anlu Rodriguez	03118	936655	050 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Rasha Jamsheer	25858	964073	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Rosa Almonte	Abuse: Police Officer Rosa Almonte entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POF Lucia Gaynor	Abuse: Police Officer Lucia Gaynor entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C.SGT Anlu Rodriguez	Abuse: Sergeant Anlu Rodriguez entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.POF Lucia Gaynor	Force: At § 87(2)(b) in the Bronx, Police Officer Lucia Gaynor used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On November 19, 2019, § 87(2)(b) called NYPD IAB and filed this complaint via telephone. On November 26, 2019, the CCRB received this complaint from NYPD IAB.

On November 15, 2019, § 87(2)(b) was inside her apartment located at § 87(2)(b), in the Bronx with three unidentified males and her § 87(2)(b) old daughter, § 87(2)(b). At 10:44 a.m., PO Rosa Almonte and PO Lucia Gaynor of the 50th Precinct responded to the location, and entered the apartment (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). Sgt. Anlu Rodriguez of the 50th Precinct later responded to the scene and Sgt. Rodriguez entered the apartment (**Allegation C: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was ultimately § 87(2)(b). After § 87(2)(b) was handcuffed, PO Gaynor pushed § 87(2)(b) in the back (**Allegation D: Force**, § 87(2)(g)).

Body-worn camera footage was received regarding this case (BR16) and summarized (BR17-19).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Rosa Almonte entered § 87(2)(b), in the Bronx.

Allegation (B) Abuse of Authority: Police Officer Lucia Gaynor entered § 87(2)(b), in the Bronx.

It is undisputed that on November 15, 2019, at approximately 10:44 a.m., PO Almonte, PO Gaynor, and later Sgt. Rodriguez responded to a report of child abuse at § 87(2)(b) in the Bronx, and entered the apartment. § 87(2)(b) was ultimately arrested and charged with § 87(2)(b).

Event Report § 87(2)(b) notes that on November 15, 2019, at 10:05 a.m., a female caller from § 87(2)(b) called 911 to report that § 87(2)(b) was concerned for the safety of a § 87(2)(b)-year-old female child that resided at § 87(2)(b) in the Bronx. The § 87(2)(b) had reported that the child's mother, whom she identified as § 87(2)(b) was on drugs and that there were three men in the apartment. Although the female caller noted that the § 87(2)(b) was scared and wished to remain anonymous, the female caller provided § 87(2)(b)'s name to 911 (BR03).

In her testimony to the CCRB, § 87(2)(b) affirmed that she had smoked marijuana several hours prior to the arrival of the officers. She stated when PO Almonte and PO Gaynor arrived, they knocked on the door. An unidentified male friend of § 87(2)(b) opened the door. § 87(2)(b) proceeded to the door once her friend had opened it. At the door, PO Almonte asked to enter the apartment, asking, "Can I go after her?", referring to § 87(2)(b). § 87(2)(b) responded that PO Almonte doing so was "fine." PO Almonte entered the apartment and exited § 87(2)(b)'s field of view. § 87(2)(b) did not testify regarding whether she consented to other officers entering her apartment. § 87(2)(b) was not under arrest during this exchange (BR01).

In her testimony to the CCRB, PO Gaynor testified that § 87(2)(b) had slurred speech and affirmed that she had consumed alcohol, marijuana, and prescription drugs for back pain. § 87(2)(b) explained that § 87(2)(b) was not in school because she had suffered an asthma attack or something similar. § 87(2)(b) repeatedly stated § 87(2)(b) was fine, and then invited the officers in, stating, "Come in and look at her bedroom." PO Gaynor and PO Almonte entered the apartment and § 87(2)(b).

bedroom (BR06).

PO Almonte testified that she did not recall if officers requested to enter the apartment. PO Almonte entered the apartment because she was concerned for the safety of § 87(2)(b). PO Almonte was concerned for § 87(2)(b) safety because § 87(2)(b) slurred her words and stumbled when she walked to the officers when they stood at the door to the apartment. § 87(2)(b) did not respond coherently to the questions PO Almonte and PO Gaynor asked her at the door. These factors PO Almonte to conclude that § 87(2)(b) was intoxicated. Additionally, the apartment smelled like marijuana once the door was opened (BR08).

BWC footage from the incident does not depict the initial entry to the apartment. The footage depicts § 87(2)(b) providing consent for officers to enter the apartment at 3m14s in PO Almonte's video, this occurs after PO Almonte was already partially inside the apartment. At 44s in PO Gaynor's BWC footage, PO Gaynor is depicted walking down the hall from the apartment. She then makes a radio transmission in which she states: "Hey, so I have a possible child abuse case: § 87(2)(b). Mom is completely fucking high out her mind. They are smoking marijuana. Super, like, the, it's like emitting a lot. The § 87(2)(b) -year-old, the § 87(2)(b) -year-old is here. She doesn't look like she has any injury or anything, but you can tell everyone in the apartment is, like, blasted" (BR18).

The arrest related to this incident is sealed (BR 26). The 50th Precinct Command Log and an entry from PO Gaynor's Memo Book list § 87(2)(b)'s top charge as § 87(2)(b) (BR 23). There is no further information about the arrest.

People v. Musto, 106 A.D.3d 1380 (2013), quoting People v. Mitchell, states that when officers have reasonable grounds to believe that there is an emergency is at hand and an immediate need for their assistance, and if there is a reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched, then officers are permitted to enter a dwelling without a search warrant (BR20).

People v. Gonzalez, 39 N.Y.2d 12 states that consent is voluntary when it is "a true act of the will, an unequivocal product of an essentially free and unconstrained choice." It further states that "voluntariness is incompatible with official coercion, actual or implicit, overt or subtle" (BR21).

The Right to Know Act, enshrined in NYC Administrative Code 14-173(a), which went into effect on May 19, 2018 (BR 25), requires that officers who seek to obtain consent to enter a residence do so by "articulating, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to such search, and explaining that such search will not be conducted if such person refuses to provide consent to such search." Officers are to refrain from entering where consent has not been obtained in this manner.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Sergeant Anlu Rodriguez entered § 87(2)(b) in the Bronx.

It is undisputed that after PO Gaynor and PO Almonte entered the residence, Sgt. Rodriguez responded to the location and entered § 87(2)(b), in the Bronx.

§ 87(2)(b) did not testify to whether she provided consent for officers other than PO Gaynor and PO Almonte to enter her apartment (BR01).

In her testimony to the CCRB (BR07), Sgt. Rodriguez testified to the CCRB that she arrived at the location with her partner, PO Jamsheer. She stated that PO Almonte and PO Gaynor were inside the apartment when she arrived. Sgt. Rodriguez stated that she first spoke with PO Almonte and PO Gaynor and then entered the apartment to speak with § 87(2)(b) and to assess the condition of the apartment and the relative safety of § 87(2)(b). Sgt. Rodriguez did not testify that she obtained § 87(2)(b)'s consent to enter the residence prior to entry.

In her BWC footage, Sgt. Rodriguez interacts with PO Gaynor and PO Almonte outside the apartment prior to making entry (BR16).

NYPD Patrol Guide Procedure 215-03 section 1 states that if a uniformed member of service believes an imminent threat to the health or safety of a child exists, that uniformed member of service is to notify the patrol supervisor. Section 3 states that the patrol supervisor, upon determining that such a danger exists to a minor child, is to direct a member of service to take the child into custody (BR14).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Force: At § 87(2)(b), in the Bronx, Police Officer Lucia Gaynor used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was arrested and removed from the apartment as a result of this incident.

In her testimony to the CCRB, § 87(2)(b) stated she was handcuffed, and that in that process, PO Gaynor pushed her against an interior wall. After she was handcuffed, § 87(2)(b) alleged that while PO Gaynor was walking her down the hall towards the elevator, PO Gaynor pushed her in the back one time (BR01).

PO Gaynor's BWC footage, which is 33m46s in length, captures, at the 19m02s timestamp, PO Gaynor handcuffing § 87(2)(b) and escorting her from the front of her apartment to the elevator. PO Gaynor's right hand touches § 87(2)(b)'s left upper arm. PO Gaynor's BWC footage does not depict PO Gaynor pushing § 87(2)(b) into wall. The footage also does not depict PO Gaynor's hand making contact with § 87(2)(b)'s back (BR17).

PO Gaynor testified that after Sgt. Rodriguez directed her to arrest § 87(2)(b) PO Gaynor then requested § 87(2)(b) leave her apartment, and placed § 87(2)(b) in handcuffs. § 87(2)(b) was compliant with being handcuffed. PO Gaynor and PO Almonte escorted § 87(2)(b) outside to their vehicle. PO Gaynor did not push § 87(2)(b) in her back while she was escorting her down the hallway. PO Gaynor did not recall if § 87(2)(b) complained of back pain while the officers escorted her outside. PO Gaynor did not recall if she placed her hand against § 87(2)(b)'s back while she walked § 87(2)(b) outside to their vehicle (BR06).

PO Almonte's testimony and Sgt. Rodriguez's testimony is consistent with that of PO Gaynor's.

BWC footage is consistent with PO Gaynor's version of events, particularly in that she did not push § 87(2)(b) against a wall or while walking.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR22).
- PO Lucia Gaynor has been a member of service for six years, and this is the first CCRB complaint to which she has been a party.
- PO Rosa Almonte has been a member of service for eleven years and has been named as a subject in one CCRB complaint and two allegations, none of which were substantiated. ■

§ 87(2)(g)

- Sgt. Rodriguez has been a member of service for fifteen years and has been named as a subject in five CCRB complaints and six allegations, none of which were substantiated.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of May 6, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR11).

Squad No.: 12

Investigator: Zachary Herman Investigator Zachary Herman 01/19/2021
Signature Print Title & Name Date

Squad Leader: Carlmais Johnson IM Carlmais Johnson October 6, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date